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SAN LUIS CONTRACTORS
SAN LUIS UNIT
EXHIBIT 04-02

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND

PROVIDING FOR PROJECT WATER SERVICE
FROM SAN LUIS UNIT AND DELTA DIVISION

THIS CONTRACT, made this _____ day of _____, 2004, in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat. 483), June 3, 1960 (74 Stat. 156), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, and _____ hereinafter referred to as the Contractor, a public agency of the State of California, duly organized, existing, and acting pursuant to the laws thereof;

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22 WITNESSETH, That:

23 EXPLANATORY RECITALS

24 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
25 Project, California, for diversion, storage, carriage, distribution and beneficial use, for flood control,
26 irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration,
27 generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of
28 waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River
29 and their tributaries; and

30 [2nd] WHEREAS, the United States constructed the ~~{San Luis Unit, hereinafter collectively~~
31 ~~referred to as the San Luis Unit facilities, which will be used }~~ **[Delta Division Facilities and the**
32 **facilities within the San Luis Unit, which will be used at least]** in part for the furnishing of water
33 to the Contractor pursuant to the terms of this Contract; and

34 [3rd] WHEREAS, the rights to Project Water were acquired by the United States pursuant
35 to California law for operation of the Project; and

36 [4th] WHEREAS, the Contractor and the United States entered into Contract No. _____,
37 {
38 }hereinafter referred to as the Existing Contract, which established terms for the delivery to
39 the Contractor of Project Water from the ~~{San Luis Unit facilities and/or the }~~ Delta Division

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Facilities [**and facilities within the San Luis Unit,**] from ____ through _____; and

[5th] WHEREAS, the Contractor and the United States have pursuant to Subsection 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into a Binding Agreement identified as Binding Agreement No. _____ BA, which provided for the non-payment of the additional mitigation and restoration charges if the Contractor agreed to renew their contract after completion of the Programmatic Environmental Impact Statement (PEIS) and negotiation of a renewal contract; and

[6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of interim and existing long-term Project Water contracts following completion of appropriate environmental documentation, including a programmatic environmental impact statement (PEIS) pursuant to the National Environmental Policy Act (NEPA) analyzing the direct and indirect impacts and benefits of implementing the CVPIA and the potential renewal of all existing contracts for Project ~~{water}~~ **[Water]**; and [Contractor specific issue]

[6.1] **Contractor Specific Issue** recognizing partial assignment of the contract to a third party or the acquisition of Project Water through assignment(s), if such acquired water is being covered under this Contract; and

[7th] WHEREAS, the United States has completed the PEIS and all other appropriate environmental review necessary to provide for long-term renewal of the Existing Contract; and

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[8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of the State of California, for water service from the Project; and

[9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of its obligations under the Existing Contract; and

[10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting Officer that the Contractor has utilized ~~{the Central Valley}~~ Project Water supplies available to it for reasonable and beneficial use ~~{and/or has demonstrated projected future demand for water use such that the Contractor has the capability}~~ and expects to utilize fully for reasonable and beneficial use the quantity of Project Water to be made available to it pursuant to this Contract; and ~~{{Contractor Specific}}~~

[11th] WHEREAS, water obtained from the Project has been relied upon by urban and agricultural areas within California for more than 50 years, and is considered by the Contractor as an essential portion of its water supply; and

[12th] WHEREAS, the economies of regions within the Project, including the Contractor's, depend upon the continued availability of water, including water service from the Project; and

~~{{(12.1)}}~~**[[12.1]]** WHEREAS, the United States Court of Appeals for the Ninth Circuit has held that Section 1(a) of the San Luis Act, Public Law 86-488, 74 Stat. 156, imposes on the

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76 Secretary a duty to provide drainage service to the San Luis Unit; and

77 ~~{(12.2)}~~[[12.2]] WHEREAS, the Contractor and the Contracting Officer recognize that
78 adequate drainage service is required to maintain agricultural production **[within certain]** areas served
79 with Project Water made available under this Contract and all renewals thereof; and

80 ~~{(12.3)}~~[[12.3]] WHEREAS, the Contracting Officer intends, to the extent appropriated
81 funds are available, to develop and implement effective solutions to drainage problems in the San Luis
82 Unit; and

83 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships
84 to pursue measures to improve water supply, water quality, and reliability of the Project for all
85 Project purposes; and

86 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
87 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of
88 the Project as required by law; to guard reasonably against Project Water shortages; to achieve a
89 reasonable balance among competing demands for use of Project Water; and to comply with all
90 applicable environmental statutes, all consistent with the legal obligations of the United States
91 relative to the Project; and

92 [14.1] WHEREAS, the parties intend by this Contract to develop a more cooperative
93 relationship in order to achieve their mutual goals; and

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[15th] WHEREAS, the Contractor has utilized or may utilize transfers, contract assignments, rescheduling and conveyance of non-Project Water under this Contract as tools to minimize the impacts of Conditions of Shortage and to maximize the beneficial use of Project Water; and

[15.1] WHEREAS, the parties desire and intend that this Contract not provide a disincentive to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory Recital immediately above; and

[16th] WHEREAS, the United States and the Contractor are willing to enter into this ~~long-term renewal~~ Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby mutually agreed by the parties hereto as follows:

DEFINITIONS

1. When used herein unless otherwise distinctly expressed, or manifestly incompatible with the intent of the parties as expressed in this Contract, the term:

(a) "Calendar Year" shall mean the period January 1 through December 31, both dates inclusive;

(b) "Charges" shall mean the payments required by Federal Reclamation law in addition to the Rates and Tiered Pricing Components specified in this Contract as determined

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annually by the Contracting Officer pursuant to this Contract;

(c) “Condition of Shortage” shall mean a condition respecting the Project during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the Contract Total;

(d) “Contracting Officer” shall mean the Secretary of the Interior’s duly authorized representative acting pursuant to this Contract or applicable Federal Reclamation law or regulation;

(e) “Contract Total” shall mean the maximum amount of water to which the Contractor is entitled under subdivision (a) of Article 3 of this Contract;

(f) “Contractor's Service Area” shall mean the area to which the Contractor is permitted to provide Project Water under this Contract as described in Exhibit “A” attached hereto, which may be modified from time to time in accordance with Article 35 of this Contract without amendment of this Contract; `

(g) “CVPIA” shall mean the Central Valley Project Improvement Act, Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

(g.1) “Delta Division Facilities” shall mean those existing and future Project facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to, the Tracy Pumping Plant, the O’Neill Pumping/Generating Plant, and the San Luis Reservoir, used to

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divert, store and convey water to those Project Contractors entitled to receive water conveyed through the Delta-Mendota Canal.

(h) “Eligible Lands” shall mean all lands to which irrigation water may be delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

(i) “Excess Lands” shall mean all lands in excess of the limitations contained in Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal Reclamation law;

(j) “Full Cost Rate” shall mean an annual rate, as determined by the Contracting Officer that shall amortizes the expenditures for construction properly allocable to the Project irrigation or M&I functions, as appropriate, of facilities in service including all O&M deficits funded, less payments, over such periods as may be required under Federal Reclamation law, or applicable contract provisions. Interest will accrue on both the construction expenditures and funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated in accordance with subsections 202(3)(B) and (3)(C) of the RRA. The full-cost rate includes actual operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules and Regulations for the RRA;

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(k) “Ineligible Lands” shall mean all lands to which irrigation water may not be delivered in accordance with Section 204 of the RRA;

(l) “Irrigation Full Cost Water Rate” shall mean the Full Cost Rate applicable to the delivery of Irrigation Water;

(m) “Irrigation Water” shall mean water made available from the Project that is used primarily in the production of agricultural crops or livestock, including domestic use incidental thereto, and watering of livestock;

(n) “Landholder” shall mean a party that directly or indirectly owns or leases nonexempt land, as provided in 43 CFR 426.2;

(o) “Municipal and Industrial (M&I) Water” shall mean Project Water, other than Irrigation Water, made available to the Contractor. M&I Water shall include water used for human use and purposes such as the watering of landscaping or pasture for animals (e.g., horses) which are kept for personal enjoyment or water delivered to landholdings operated in units of less than five acres unless the Contractor establishes to the satisfaction of the Contracting Officer that the use of water delivered to any such landholding is a use described in subdivision (m) of this Article;

[Contractor Specific]

(p) “M&I Full Cost Water Rate” shall mean the Full Cost Rate applicable to the delivery of M&I Water;

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(q) “Operation and Maintenance” or “O&M” shall mean normal and reasonable care, control, operation, repair, replacement (other than capital replacement), and maintenance of Project facilities;

(r) “Operating Non-Federal Entity” shall mean the San Luis & Delta-Mendota Water Authority, a Non-Federal entity which has the obligation to operate and maintain all or a portion of the Delta Division Facilities pursuant to an agreement with the United States, and which may have funding obligations with respect thereto;

(s) “Project” shall mean the Central Valley Project owned by the United States and managed by the Department of the Interior, Bureau of Reclamation;

(t) “Project Contractors” shall mean all parties who have water service contracts for Project Water from the Project with the United States pursuant to Federal Reclamation law;

(u) “Project Water” shall mean all water that is developed, diverted, stored, or delivered by the Secretary in accordance with the statutes authorizing the Project and in accordance with the terms and conditions of water rights acquired pursuant to California law;

(v) “Rates” shall mean the payments determined annually by the Contracting Officer in accordance with the then current applicable water ratesetting policies for the Project, as described in subdivision (a) of Article 7 of this Contract;

(w) “Recent Historic Average” shall mean the most recent five year average of the

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184 final forecast of Water Made Available to the Contractor pursuant to this Contract or its preceding
185 contract(s);

186 (x) "Secretary" shall mean the Secretary of the Interior, a duly appointed
187 successor, or an authorized representative acting pursuant to any authority of the Secretary and
188 through any agency of the Department of the Interior;

189 (y) "Tiered Pricing Component" shall be the incremental amount to be paid for
190 each acre-foot of Water Delivered as described in subdivision (j) of Article 7 of this Contract;

191 (z) "Water Delivered" or "Delivered Water" shall mean Project Water diverted for
192 use by the Contractor at the point(s) of delivery approved by the Contracting Officer;

193 (aa) "Water Made Available" shall mean the estimated amount of Project Water
194 that can be delivered to the Contractor for the upcoming Year as declared by the Contracting Officer,
195 pursuant to subdivision (a) of Article 4 of this Contract;

196 (bb) "Water Scheduled" shall mean Project Water made available to the Contractor
197 for which times and quantities for delivery have been established by the Contractor and Contracting
198 Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

199 (cc) "Year" shall mean the period from and including March 1 of each Calendar
200 Year through the last day of February of the following Calendar Year.

201 **TERM OF CONTRACT**

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2. (a) This Contract shall be effective March 1, 200_, through February 28, (29),
20___. This Contract, when effective, supercedes the Existing Contract. In the event the Contractor
wishes to renew this Contract beyond February, 28, (29), _____, the Contractor shall submit a
request for renewal in writing to the Contracting Officer no later than two years prior to the date this
Contract expires. The renewal of this Contract insofar as it pertains to the furnishing of Irrigation
Water to the Contractor shall be governed by subdivision (b) of this Article, and the renewal of this
Contract insofar as it pertains to the furnishing of M&I Water to the Contractor shall be governed by
subdivision (c) of this Article. [Contractor Specific]

(b) (1) Under terms and conditions of a renewal contract that are mutually
agreeable to the parties hereto, and upon a determination by the Contracting Officer that at the time
of contract renewal the conditions set forth in subdivision (b)(2) of this Article are met, and subject to
Federal and State law, this Contract, insofar as it pertains to the furnishing of Irrigation Water to the
Contractor, shall be renewed for a period of 25 years.

(2) The conditions which must be met for this Contract to be renewed are:
(i) the Contractor has prepared a water conservation plan that has been determined by the Contracting
Officer in accordance with Article 26 of this Contract to meet the conservation and efficiency criteria
for evaluating such plans established under Federal law; (ii) the Contractor is implementing an
effective water conservation and efficiency program based on the Contractor's water conservation

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plan as required by Article 26 of this Contract; (iii) the Contractor is operating and maintaining all water measuring devices and implementing all water measurement methods as approved by the Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor has reasonably and beneficially used the Project Water supplies made available to it and, based on projected demands, is reasonably anticipated and expects fully to utilize for reasonable and beneficial use the quantity of Project Water to be made available to it pursuant to such renewal; (v) the Contractor is complying with all terms and conditions of this Contract; and (vi) the Contractor has the physical and legal ability to deliver Project Water.

(3) The terms and conditions of the renewal contract described in subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed consistent with the parties' respective legal rights and obligations, and in consideration of all relevant facts and circumstances, as those circumstances exist at the time of renewal, including, without limitation, the Contractor's need for continued delivery of Project Water; environmental conditions affected by implementation of the Contract to be renewed, and specifically changes in those conditions that occurred during the life of the Contract to be renewed; the Secretary's progress toward achieving the purposes of the CVPIA as set out in Section 3402 and in implementing the specific provisions of the CVPIA; and current and anticipated economic circumstances of the region served by the Contractor.

(c) This Contract, insofar as it pertains to the furnishing of M&I Water to the

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Contractor, shall be renewed for successive periods of up to 40 years each, which periods shall be consistent with the then-existing ~~{Reclamation-wide}~~ policy, under terms and conditions mutually agreeable to the parties and consistent with Federal and State law. [Contractor Specific] The Contractor shall be afforded the opportunity to comment to the Contracting Officer on the proposed adoption and application of any revised ~~{Reclamation-wide}~~ policy applicable to the delivery of M&I Water that would limit the term of any subsequent renewal contract with the Contractor for the furnishing of M&I Water to less than 40 years.

(d) The Contracting Officer shall make a determination ten years after the date of execution of this Contract, and every five years thereafter during the term of this Contract, of whether a conversion to a contract under subsection (c)(1) of Section 9 of the Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956 (Public Law 643). Notwithstanding any provision of this Contract, the Contractor reserves and shall have all rights and benefits under Public Law 643. The Contracting Officer anticipates that during the term of this contract, all authorized Project construction expected to occur will have occurred, and on that basis the Contracting Officer agrees upon such completion to allocate all costs that are properly assignable to the Contractor, and agrees further that, at any time after such allocation is made, and subject to satisfaction of the condition set out in this subdivision, this Contract shall, at the request of the Contractor, be converted to a contract under subsection 9(d) or 9(c)(1), whichever is applicable, of

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the Reclamation Project Act of 1939, subject to applicable Federal law and under stated terms and conditions mutually agreeable to the Contractor and the Contracting Officer. A condition for such conversion to occur shall be a determination by the Contracting Officer that, account being taken of the amount credited to return by the Contractor as provided for under Federal Reclamation law, the remaining amount of construction costs assignable for ultimate return by the Contractor can probably be repaid to the United States within the term of a contract under said subsection 9(d) or 9(c)(1), whichever is applicable. If the remaining amount of costs that are properly assignable to the Contractor cannot be determined during the term of this Contract, the Contracting Officer shall notify the Contractor, and provide the reason(s) why such a determination could not be made. Further, the Contracting Officer shall make such a determination as soon thereafter as possible so as to permit, upon request of the Contractor and satisfaction of the condition set out above, conversion to a contract under said subsection 9(d) or 9(c)(1), whichever is applicable. In the event such determination of costs has not been made at a time which allows conversion of this Contract during the term of this Contract or the Contractor has not requested conversion of this Contract within such term, the parties shall incorporate in any subsequent renewal contract as described in subdivision (b) of this Article a provision that carries forth in substantially identical terms the provisions of this subdivision.

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WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

3. (a) During each Year, consistent with all applicable State water rights, permits, and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this Contract, the Contracting Officer shall make available for delivery to the Contractor _____ acre-feet of Project Water for irrigation and M&I purposes. The ~~{quantity of}~~ Water Delivered to the Contractor in accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

(b) Because the capacity of the Project to deliver Project Water has been constrained in recent years and may be constrained in the future due to many factors including hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor actually receiving the amount of water set out in subdivision (a) of this Article in any given Year is uncertain. The Contracting Officer's most recent modeling referenced in the PEIS projected that the Contract Total set forth in this Contract will not be available to the Contractor in many years. During the most recent five years, the Recent Historic Average of Water Made Available to the Contractor was _____ acre-feet. Nothing in subdivision (b) of this Article shall affect the rights and obligations of the parties under any provision of this Contract.

(c) The Contractor shall utilize the Project Water in accordance with all applicable legal requirements.

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(d) The Contractor shall make reasonable and beneficial use of all Project Water or other water furnished pursuant to subdivision (f) of this Article. ~~{Contract.}~~ Groundwater recharge programs (direct, indirect, or in lieu), groundwater banking programs, surface water storage programs, and other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted within the Contractor's Service Area which are consistent with applicable State law and result in use consistent with Federal Reclamation law will be allowed; Provided, That any direct recharge program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to Article 26 of this Contract; Provided, further, That such water conservation plan demonstrates sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average, the quantity of Delivered Water is demonstrated to be reasonable for such uses and in compliance with Federal Reclamation law. Groundwater recharge programs, groundwater banking programs, surface water storage programs, and other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted outside the Contractor's Service Area may be permitted upon written approval of the Contracting Officer, which approval will be based upon environmental documentation, Project Water rights, and Project operational concerns. The Contracting Officer will address such concerns in regulations, policies, or guidelines.

(e) The Contractor shall comply with requirements applicable to the Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract

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undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are within the Contractor's legal authority to implement. The Existing Contract, which evidences in excess of ___ years of diversions for irrigation and/or M&I purposes of the quantities of water provided in subdivision (a) of Article 3 of this Contract, will be considered in developing an appropriate baseline for the biological assessments prepared pursuant to the ESA, and any other needed environmental review. Nothing herein shall be construed to prevent the Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with respect to any biological opinion or other environmental documentation referred to in this Article.

(f) Following the declaration of Water Made Available under Article 4 of this Contract, the Contracting Officer will make a determination whether Project Water, or other water available to the Project, can be made available to the Contractor in addition to the Contract Total under this Article during the Year without adversely impacting other Project Contractors. At the request of the Contractor, the Contracting Officer will consult with the Contractor prior to making such a determination. If the Contracting Officer determines that Project Water, or other water available to the Project, can be made available to the Contractor, the Contracting Officer will announce the availability of such water and shall so notify the Contractor as soon as practical. The Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of taking such water to determine the most equitable and efficient allocation of such water. If the

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Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make such water available to the Contractor in accordance with applicable statutes, regulations, guidelines, and policies. Subject to existing long-term contractual commitments, water rights and operational constraints, long-term Project Contractors shall have a first right to acquire such water, including Project Water made available pursuant to Section 215 of the RRA

(g) The Contractor may request permission to reschedule for use during the subsequent Year some or all of the Water Made Available to the Contractor during the current Year, referred to as “rescheduled water.” The Contractor may request permission to use during the current Year a quantity of Project Water which may be made available by the United States to the Contractor during the subsequent Year referred to as “preuse.” The Contracting Officer’s written approval may permit such uses in accordance with applicable statutes, regulations, guidelines, and policies.

(h) The Contractor’s right pursuant to Federal Reclamation law and applicable State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract during the term thereof and any subsequent renewal contracts, as described in Article 2 of this Contract, during the terms thereof shall not be disturbed so long as the Contractor shall fulfill all of its obligations under this Contract and any renewals thereof. Nothing in the preceding sentence shall affect the Contracting Officer’s ability to impose shortages under Article 11 or subdivision (b) of Article 12 of this Contract or applicable provisions of any subsequent renewal contracts.

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(i) Project Water furnished to the Contractor pursuant to this Contract may be delivered for purposes other than those described in subdivisions (m) and (o) of Article 1 of this Contract upon written approval by the Contracting Officer in accordance with the terms and conditions of such approval.

(j) The Contracting Officer shall make reasonable efforts to protect the water rights necessary for the Project and to provide the water available under this Contract. The Contracting Officer shall not object to participation by the Contractor, in the capacity and to the extent permitted by law, in administrative proceedings related to the Project Water rights; Provided, however, That the Contracting Officer retains the right to object to the substance of the Contractor's position in such a proceeding; Provided, further, That in such proceedings the Contracting Officer shall recognize the Contractor has a legal right under the terms of this Contract to use Project Water.

TIME FOR DELIVERY OF WATER

4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall announce the Contracting Officer's expected declaration of the Water Made Available. Such declaration ~~{of Project operations}~~ will be expressed in terms of both Water Made Available and the Recent Historic Average and will be updated monthly, and more frequently if necessary, based on then-current operational and hydrologic conditions and a new declaration with changes, if any, to the Water Made Available will be made. The Contracting Officer shall provide forecasts of Project

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operations and the basis of the estimate, with relevant supporting information, upon the written request of the Contractor. Concurrently with the declaration of the Water Made Available, the Contracting Officer shall provide the Contractor with the updated Recent Historic Average.

(b) On or before each March 1 and at such other times as necessary, the Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer, showing the monthly quantities of Project Water to be delivered by the United States to the Contractor pursuant to this Contract for the Year commencing on such March 1. The Contracting Officer shall use all reasonable means to deliver Project Water according to the approved schedule for the Year commencing on such March 1.

(c) The Contractor shall not schedule Project Water in excess of the quantity of Project Water the Contractor intends to put to reasonable and beneficial use within the Contractor's Service Area or sell, transfer or exchange pursuant to Article 9 of this Contract during any Year.

(d) Subject to the conditions set forth in subdivision (a) of Article 3 of this Contract, the United States shall deliver Project Water to the Contractor in accordance with the initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any written revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable time prior to the date(s) on which the requested change(s) is/are to be implemented.

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POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this Contract shall be delivered to the Contractor at ~~{Project facilities and any additional point or points and any additional}~~ **[the]** point or points of delivery ~~{either on Project facilities or another location or locations}~~ mutually agreed to in writing by the Contracting Officer and the Contractor.

(b) The Contracting Officer, the Operating Non-Federal Entity, or other ~~{appropriate}~~ entity ~~{as}~~ designated by the Contracting Officer **[as responsible for the operation of specific Project facilities utilized to deliver the Contractor's Project Water]** (hereinafter referred to as ~~{the}~~ **[an]** "Other ~~{Appropriate}~~ **[Operating]** Entity") shall make all reasonable efforts to maintain sufficient flows and levels of water in the Project facilities ~~{Delta-Mendota Canal to}~~ **[to]** deliver Project Water to the Contractor at specific turnouts established pursuant to subdivision (a) of this Article.

(c) The Contractor shall deliver Irrigation Water in accordance with any applicable land classification provisions of Federal Reclamation law and the associated regulations. The Contractor shall not deliver Project Water to land outside the Contractor's Service Area unless approved in advance by the Contracting Officer.

(d) All Water Delivered to the Contractor pursuant to this Contract shall be measured and recorded with equipment furnished, installed, operated, and maintained by the United

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States, the Operating Non-Federal Entity or Other ~~{Appropriate Entity as designated by the~~
~~Contracting Officer (hereinafter "Other Appropriate Entity")}~~ **[Operating Entity]** at the point or
points of delivery established pursuant to subdivision (a) of this Article. Upon the request of either
party to this Contract, the Contracting Officer shall investigate, or cause to be investigated by the
responsible Operating Non-Federal Entity or Other ~~{Appropriate}~~ **[Operating]** Entity, the accuracy
of such measurements and shall take any necessary steps to adjust any errors appearing therein. For
any period of time when accurate measurements have not been made, the Contracting Officer shall
consult with the Contractor and the responsible Operating Non-Federal Entity or Other ~~{Appropriate}~~
[Operating] Entity prior to making a final determination of the quantity delivered for that period of
time.

(e) Neither the Contracting Officer, any Operating Non-Federal Entity nor Other
~~{Appropriate}~~ **[Operating]** Entity ~~{??}~~ shall be responsible for the control, carriage, handling, use,
disposal, or distribution of ~~{Project}~~ Water Delivered to the Contractor pursuant to this Contract
beyond the delivery points specified in subdivision (a) of this Article. The Contractor shall
indemnify the United States, its officers, employees, agents, and assigns on account of damage or
claim of damage of any nature whatsoever for which there is legal responsibility, including property
damage, personal injury, or death arising out of or connected with the control, carriage, handling, use,
disposal, or distribution of such ~~{Project}~~ Water Delivered beyond such delivery points, except for

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any damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its officers, employees, agents, or assigns, including any responsible Operating Non-Federal Entity or Other ~~{Appropriate}~~ **[Operating]** Entity{??}, with the intent of creating the situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents, or assigns, including any responsible Operating Non-Federal Entity **[or Other Operating Entity]**; (iii) negligence of the Contracting Officer or any of its officers, employees, agents, or assigns including any responsible Operating Non-Federal Entity or Other ~~{Appropriate}~~ **[Operating]** Entity{??}; or (iv) damage or claims resulting from a malfunction of facilities owned and/or operated by the United States or responsible Operating Non-Federal Entity or Other ~~{Appropriate Entity??}~~; ~~Provided, That the Contractor is not the Operating Non-Federal Entity or Other Appropriate Entity?? that owned or operated the malfunctioning facility(ies) from which the damage claim arose.}~~ **[Operating Entity; Provided, That this subdivision (e) of this Article 5 shall not be applicable to the Contractor as an Other Operating Entity, for example, pursuant to Article 28.2 of this Contract. Provided further, That nothing contained herein creates an obligation on the Contractor to indemnify the United States, its officers, employees, agents, and assigns on account of damage or claim of damage for a failure to provide drainage service.]**

MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

6. (a) The Contractor has established a measuring program satisfactory to the

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Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation purposes within the Contractor's Service Area is measured at each agricultural turnout and such water delivered for M&I purposes is measured at each M&I service connection. The water measuring devices or water measuring methods of comparable effectiveness must be acceptable to the Contracting Officer. The Contractor shall be responsible for installing, operating, and maintaining and repairing all such measuring devices and implementing all such water measuring methods at no cost to the United States. The Contractor shall use the information obtained from such water measuring devices or water measuring methods to ensure its proper management of the water, to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered for M&I purposes by customer class as defined in the Contractor's water conservation plan provided for in Article 26 of this Contract. Nothing herein contained, however, shall preclude the Contractor from establishing and collecting any charges, assessments, or other revenues authorized by California law. The Contractor shall include a summary of all its annual surface water deliveries in the annual report described in subdivision (c) of Article 26.

(b) To the extent the information has not otherwise been provided, upon execution of this Contract, the Contractor shall provide to the Contracting Officer a written report describing the measurement devices or water measuring methods being used or to be used to implement subdivision (a) of this Article and identifying the agricultural turnouts and the M&I service

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connections or alternative measurement programs approved by the Contracting Officer, at which such measurement devices or water measuring methods are being used, and, if applicable, identifying the locations at which such devices and/or methods are not yet being used including a time schedule for implementation at such locations. The Contracting Officer shall advise the Contractor in writing within 60 days as to the adequacy and necessary modifications, if any, of the measuring devices or water measuring methods identified in the Contractor's report and if the Contracting Officer does not respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the Contractor that the measuring devices or methods are inadequate, the parties shall within 60 days following the Contracting Officer's response, negotiate in good faith the earliest practicable date by which the Contractor shall modify said ~~measuring devices~~ [measuring devices] and/or measuring methods as required by the Contracting Officer to ensure compliance with subdivision (a) of this Article.

(c) All new surface water delivery systems installed within the Contractor's Service Area after the effective date of this Contract shall also comply with the measurement provisions described in subdivision (a) of this Article.

(d) The Contractor shall inform the Contracting Officer and the State of California in writing by April 30 of each Year of the monthly volume of surface water delivered within the Contractor's Service Area during the previous Year.

(e) The Contractor shall inform the Contracting Officer and the Operating Non-Federal Entity on or before the 20th calendar day of each month of the quantity of Irrigation Water and M&I Water taken during the preceding month.

RATES AND METHOD OF PAYMENT FOR WATER

7. (a) The Contractor shall pay the United States as provided in this Article for all Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended, modified, or superseded only through a public notice and comment procedure; (ii) applicable Federal Reclamation law and associated rules and regulations, or policies; and (iii) other applicable provisions of this Contract. Payment shall be made by cash transaction, wire transfer, or any other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B", as may be revised annually.

(b) The Contracting Officer shall notify the Contractor of the Rates, Charges, and Tiered Pricing Components as follows:

(1) Prior to July 1 of each Calendar Year, the Contracting Officer shall provide the Contractor an estimate of the Charges for Project Water that will be applied to the period

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October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and the basis for such estimate. The Contractor shall be allowed not less than two months to review and comment on such estimates. On or before September 15 of each Calendar Year, the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during the period October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such notification shall revise Exhibit "B."

(2) Prior to October 1 of each Calendar Year, the Contracting Officer shall make available to the Contractor an estimate of the Rates and Tiered Pricing Components for Project Water for the following Year and the computations and cost allocations upon which those Rates are based. The Contractor shall be allowed not less than two months to review and comment on such computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer shall provide the Contractor with the final Rates and Tiered Pricing Components to be in effect for the upcoming Year, and such notification shall revise Exhibit [B].

(c) At the time the Contractor submits the initial schedule for the delivery of Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor shall make an advance payment to the United States equal to the total amount payable pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be delivered pursuant to this Contract during the first two calendar months of the Year. Before the end

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of the first month and before the end of each calendar month thereafter, the Contractor shall make an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract during the second month immediately following. Adjustments between advance payments for Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of the following month; Provided, That any revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this Contract during any month shall be accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered to the Contractor in advance of such payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no additional Project Water shall be delivered to the Contractor unless and until an advance payment at the Rates then in effect for such additional Project Water is made. Final adjustment between the advance payments for the Water Scheduled and payments for the quantities of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no later than April 30th of the following Year, or 60 days after the delivery of Project Water rescheduled under subdivision (g) of Article 3 of this Contract if such water is not delivered by the last day of February.

(d) The Contractor shall also make a payment in addition to the Rate(s) in

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subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the appropriate Tiered Pricing Component then in effect, before the end of the month following the month of delivery; Provided, That the Contractor may be granted an exception from the Tiered Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery report for the subject month prepared by the Operating Non-Federal Entity or, if there is no Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of payments due to the United States for Charges for the next month. Any amount to be paid for past due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20 of this Contract.

(e) The Contractor shall pay for any Water Delivered under subdivision ~~[(d)]~~[(a)], (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting policies; Provided, That the Rate for Water Delivered under subdivision ~~[(d) or]~~(f) of Article 3 of this Contract shall be no more than the otherwise applicable Rate for Irrigation Water or M&I Water under subdivision (a) of this Article.

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(f) Payments to be made by the Contractor to the United States under this Contract may be paid from any revenues available to the Contractor.

(g) All revenues received by the United States from the Contractor relating to the delivery of Project Water or the delivery of non-Project water through Project facilities shall be allocated and applied in accordance with Federal Reclamation law and the associated rules or regulations, and the then current Project ratesetting policies for M&I Water or Irrigation Water.

(h) The Contracting Officer shall keep its accounts pertaining to the administration of the financial terms and conditions of its long-term contracts, in accordance with applicable Federal standards, so as to reflect the application of Project costs and revenues. The Contracting Officer shall, each Year upon request of the Contractor, provide to the Contractor a detailed accounting of all Project and Contractor expense allocations, the disposition of all Project and Contractor revenues, and a summary of all water delivery information. The Contracting Officer and the Contractor shall enter into good faith negotiations to resolve any discrepancies or disputes relating to accountings, reports, or information.

(i) The parties acknowledge and agree that the efficient administration of this Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms, policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Components, and/or for making and allocating payments, other than those set forth in this Article may be in the mutual

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best interest of the parties, it is expressly agreed that the parties may enter into agreements to modify the mechanisms, policies, and procedures for any of those purposes while this Contract is in effect without amending this Contract.

(j) (1) Beginning at such time as deliveries of Project Water in a Year exceed 80 percent of the Contract Total, then before the end of the month following the month of delivery the Contractor shall make an additional payment to the United States equal to the applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the Contract Total, shall equal the one-half of the difference between the Rate established under subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The Tiered Pricing Component for the amount of Water Delivered which exceeds 90 percent of the Contract Total shall equal the difference between (i) the Rate established under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable.

(2) Subject to the Contracting Officer's written approval, the Contractor may request and receive an exemption from such Tiered Pricing Components for Project Water delivered to produce a crop which the Contracting Officer determines will provide significant and quantifiable habitat values for waterfowl in fields where the water is used and the crops are produced;

Provided, That the exemption from the Tiered Pricing Components for Irrigation Water shall apply only if such habitat values can be assured consistent with the purposes of CVPIA through binding agreements executed with or approved by the Contracting Officer prior to use of such water.

(3) For purposes of determining the applicability of the Tiered Pricing Components pursuant to this Article, Water Delivered shall include Project Water that the Contractor transfers to others but shall not include Project Water transferred ~~and delivered~~ to the Contractor.

(k) For the term of this Contract, Rates applied under the respective ratesetting policies will be established to recover only reimbursable O&M (including any deficits) and capital costs of the Project, as those terms are used in the then-current Project ratesetting policies, and interest, where appropriate, except in instances where a minimum Rate is applicable in accordance with the relevant Project ratesetting policy. Changes of significance in practices which implement the Contracting Officer's ratesetting policies will not be implemented until the Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and impact of the proposed change.

(l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates adjusted upward or downward to reflect the changed costs of delivery (if any) of the transferred Project Water to the transferee's point of delivery in accordance with the then applicable CVP Ratesetting Policy.

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If the Contractor is receiving lower Rates and Charges because of inability to pay and is transferring Project Water to another entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project Water shall be the Contractor's Rates and Charges unadjusted for inability to pay.

(m) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting Officer is authorized to adjust determinations of ability to pay every five years.

(n) The Contractor asserts that it is not legally obligated to pay any Project deficits claimed by the United States to have accrued as of the date of this Contract or deficit-related interest charges thereon. By entering into this Contract, the Contractor does not waive any legal rights or remedies that it may have with respect to such disputed issues. Notwithstanding the execution of this Contract and payments made hereunder, the Contractor may challenge in the appropriate administrative or judicial forums: (1) the existence, the computation, or imposition of any deficit charges accruing during the term of the Existing Contract; (2) interest accruing on any such deficits; (3) the inclusion of any such deficit charges or interest in the Rates; (4) the application by the United States of payments made by the Contractor under its Existing Contract; and (5) the application of such payments in the Rates. The Contracting Officer agrees that the Contractor shall be entitled to the benefit of any administrative or judicial ruling in favor of any ~~other~~ Project M&I contractor on any of these issues, and credits for payments heretofore made, provided that the basis for such ruling

is applicable to the Contractor. [Contractor Specific]

NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

8. The Contractor and the Contracting Officer concur that, as of the effective date of this Contract, the Contractor has no non-interest bearing O&M deficits and shall have no further liability therefore.

SALES, TRANSFERS, OR EXCHANGES OF WATER

9. (a) The right to receive Project Water provided for in this Contract may be sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of California if such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this Contract may take place without the prior written approval of the Contracting Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be approved absent all appropriate environmental documentation, including but not limited to, documents prepared pursuant to the NEPA and the ESA. Such environmental documentation should include, as appropriate, an analysis of groundwater impacts and economic and social effects, including environmental justice, of the proposed water transfers on both the transferor and transferee.

(b) In order to facilitate efficient water management by means of water transfers of the type historically carried out among Project Contractors located within the same geographical area

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and to allow the Contractor to participate in an accelerated water transfer program during the term of this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental documentation, required by Federal law, including but not limited to, the NEPA and the ESA analyzing annual transfers within such geographical areas and the Contracting Officer shall determine whether such transfers comply with applicable law. Following the completion of the environmental documentation, such transfers addressed in such documentation shall be conducted with advance notice to the Contracting Officer, but shall not require prior written approval by the Contracting Officer. Such environmental documentation and the Contracting Officer's compliance determination shall be reviewed every five years and updated, as necessary, prior to the expiration of the then existing five year period. All subsequent environmental documentation shall include an alternative to evaluate not less than the quantity of Project Water historically transferred within the same geographical area.

(c) For a water transfer to qualify under subdivision (b) of this Article, such water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three years, for M&I use, groundwater recharge, groundwater banking, or similar groundwater activities, surface water storage, or fish and wildlife resources; not lead to land conversion; and be delivered to established cropland, wildlife refuges, groundwater basins or M&I use; (ii) occur within a single Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water through existing

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facilities with no new construction or modifications to facilities and be between existing Project Contractors and/or the Contractor and the United States, Department of the Interior; and (v) comply with all applicable Federal, State, and local or tribal laws and requirements imposed for protection of the environment and Indian Trust Assets, as defined under Federal law.

[(d) The United States shall make Project power available to the Contractor, at no cost, for the purpose of conveying Project Water or non-Project water through major Project conveyance facilities if such water is acquired by the Contractor to supplement Water Made Available in any Year in which there is a Condition of Shortage. Major Project conveyance facilities shall include Tracy Pumping Plant, Dos Amigos Pumping Plant, and Harvey O. Banks Pumping Plant. The United States' obligation hereunder shall be limited to providing Project power to convey water acquired by the Contractor up to the Contract Total.]

APPLICATION OF PAYMENTS AND ADJUSTMENTS

10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M, capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of more than \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such overpayment at the option of the Contractor, may be credited against amounts to become due to the United States by the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole

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remedy of the Contractor or anyone having or claiming to have the right to the use of any of the Project Water supply provided for herein. All credits and refunds of overpayments shall be made within 30 days of the Contracting Officer obtaining direction as to how to credit or refund such overpayment in response to the notice to the Contractor that it has finalized the accounts for the Year in which the overpayment was made.

(b) All advances for miscellaneous costs incurred for work requested by the Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs when the work has been completed. If the advances exceed the actual costs incurred, the difference will be refunded to the Contractor. If the actual costs exceed the Contractor's advances, the Contractor will be billed for the additional costs pursuant to Article 25.

TEMPORARY REDUCTIONS--RETURN FLOWS

11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the requirements of Federal law and (ii) the obligations of the United States under existing contracts, or renewals thereof, providing for water deliveries from the Project, the Contracting Officer shall make all reasonable efforts to optimize Project Water deliveries to the Contractor as provided in this Contract.

(b) The Contracting Officer or Operating Non-Federal Entity may temporarily discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the

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purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far as feasible the Contracting Officer or Operating Non-Federal Entity will give the Contractor due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given; Provided, That the United States shall use its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of service after such reduction or discontinuance, and if requested by the Contractor, the United States will, if possible, deliver the quantity of Project Water which would have been delivered hereunder in the absence of such discontinuance or reduction.

(c) The United States reserves the right to all seepage and return flow water derived from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the Contractor's Service Area; Provided, That this shall not be construed as claiming for the United States any right to seepage or return flow being put to reasonable and beneficial use pursuant to this Contract within the Contractor's Service Area by the Contractor or those claiming by, through, or under the Contractor.

CONSTRAINTS ON THE AVAILABILITY OF WATER

12. (a) In its operation of the Project, the Contracting Officer will use all reasonable means to guard against a Condition of Shortage in the quantity of water to be made available to the

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Contractor pursuant to this ~~{long-term-renewal}~~ Contract. In the event the Contracting Officer determines that a Condition of Shortage appears probable, the Contracting Officer will notify the Contractor of said determination as soon as practicable.

(b) If there is a Condition of Shortage because of errors in physical operations of the Project, drought, other physical causes beyond the control of the Contracting Officer or actions taken by the Contracting Officer to meet legal obligations then, except as provided in subdivision (a) of Article 18 of this Contract, no liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

(c) In any Year in which there may occur a Condition of Shortage for any of the reasons specified in subdivision (b) of this Article, the Contracting Officer shall apportion Irrigation Water among the Contractor and others entitled to Irrigation Water ~~{(which)}~~**[(which)]** for purposes of this Article 12(c) only, shall include other Project Water that is subject to Irrigation water shortage criteria) from Delta Division Facilities under long-term water service or repayment contracts as follows:

(1) The Contracting Officer shall make A an initial and subsequent determinations as necessary ~~{shall be made}~~ of the total quantity of Irrigation Water estimated to be scheduled or actually scheduled under subdivision (b) of Article ~~{3}~~ 4 of this Contract and under all other long-term water service or repayment contracts then in force for the delivery of Irrigation Water by the

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United States from Delta Division Facilities during the relevant Year, the quantity so determined

being hereinafter referred to as the total scheduled entitlements; ~~{contractual commitments;}~~

(2) A determination shall be made of the total quantity of Irrigation Water that is available for meeting the total scheduled entitlements ~~{contractual commitments}~~, the quantity so determined being hereinafter referred to as the available supply;

(3) The total quantity of Irrigation Water estimated to be scheduled or actually scheduled by the Contractor during the relevant Year, under subdivision (b) of Article 4 hereof, shall be divided by the total scheduled entitlements ~~{contractual commitments}~~, the quotient thus obtained being hereinafter referred to as the Contractor's proportionate entitlement; and

(4) The *available supply* shall be multiplied by the Contractor's proportionate entitlement and the result shall be the quantity of Irrigation Water ~~{required to be delivered}~~ made available by the United States to the Contractor for the relevant Year in accordance with the schedule developed by the Contracting Officer under subdivision (c)(1), but in no event shall such amount exceed the Contract Total.

In the event the Contracting Officer subsequently determines that the Contracting Officer can increase or needs to decrease the available supply for delivery from Delta Division Facilities to long-term water service and repayment Contractors during the relevant Year, such additions or reductions ~~{additional Irrigation Water}~~ to the available supply shall be apportioned consistent with

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subparagraphs (1) through (4), inclusive.

(d) Project Water furnished under this Contract for M&I purposes will be allocated in accordance with the then existing Project M&I Water Shortage Policy. Such policy shall be amended, modified, or superseded only through a public notice and comment procedure. [Contractor Specific]

(e) By entering into this Contract, the Contractor does not waive any legal rights or remedies it may have to file or participate in any administrative or judicial proceeding contesting (i) the sufficiency of the manner in which any Project M&I Water Shortage Policy adopted after the effective date of this Contract was promulgated; (ii) the substance of such policy; or (iii) the applicability of such a policy. By agreeing to the foregoing, the Contracting Officer does not waive any legal defenses or remedies that it may then have to assert in such a proceeding.

UNAVOIDABLE GROUNDWATER PERCOLATION

13. To the extent applicable, the Contractor shall not be deemed to have delivered Irrigation Water to Excess Lands or Ineligible Lands within the meaning of this Contract if such lands are irrigated with groundwater that reaches the underground strata as an unavoidable result of the delivery of Irrigation Water by the Contractor to Eligible Lands.

RULES AND REGULATIONS

14. The parties agree that the delivery of Irrigation Water or use of Federal facilities

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pursuant to this Contract is subject to Federal Reclamation law, including but not limited to, the Reclamation Reform Act of 1982 (43 U.S.C.390aa et seq.), as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

WATER AND AIR POLLUTION CONTROL

15. The Contractor, in carrying out this Contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of California, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

QUALITY OF WATER

16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to this Contract shall be operated and maintained to enable the United States to deliver Project Water to the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat. 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

(b) The O&M of Project facilities shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest

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level reasonably attainable as determined by the Contracting Officer. The Contractor shall be responsible for compliance with all State and Federal water quality standards applicable to surface and subsurface agricultural drainage discharges generated through the use of Federal or Contractor facilities or Project Water provided by the Contractor within the Contractor's Service Area.

(c) ~~[[San Luis Unit specific issue regarding Drainage language]]~~ [The Contracting Officer shall provide the Contractor with financial and accounting information, at least annually, on any Federal expenditures relating to drainage service, which the Contracting Officer or the United States may or intends to include in drainage service rates payable by the Contractor, and to provide the Contractor with the opportunity to comment on the inclusion of such expenditures in drainage service rates.]

~~[(c)]~~[(d)] The Contracting Officer shall notify the Contractor in writing when drainage service becomes available. Thereafter, the Contracting Officer shall provide drainage service to the Contractor at rates established pursuant to the then-existing ratesetting policy for irrigation water; Provided, that such ratesetting policy shall be amended, modified, or superceded only through the process described in subdivision ~~[(c)]~~[(a)] of Article 7 of this Contract.

WATER ACQUIRED BY THE CONTRACTOR
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17. (a) Water or water rights now owned or hereafter acquired by the Contractor other

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than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may be simultaneously transported through the same distribution facilities of the Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water and non-Project water were constructed without funds made available pursuant to Federal Reclamation law, the provisions of Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive Irrigation Water must be established through the certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation Water and non-Project water are/were constructed with funds made available pursuant to Federal Reclamation law, the non-Project water will be subject to the acreage limitation provisions of Federal Reclamation law, unless the Contractor pays to the United States the incremental fee described in 43 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the cost to the Federal Government, including interest, of storing or delivering non-Project water, which for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid distribution system costs divided by the total irrigable acreage within the Contractor's Service Area. The incremental fee per acre is the mathematical result of such quotient times the interest rate

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determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental fee will be charged to each acre of excess or full cost land within the Contractor's Service Area that receives non-Project water through Federally financed or constructed facilities. The incremental fee calculation methodology will continue during the term of this Contract absent the promulgation of a contrary Reclamation-wide rule, regulation or policy adopted after the Contractor has been afforded the opportunity to review and comment on the proposed rule, regulation or policy. If such rule, regulation or policy is adopted it shall supersede this provision.

(b) Water or water rights now owned or hereafter acquired by the Contractor, other than from the United States may be stored, conveyed and/or diverted through Project facilities, subject to the completion of appropriate environmental documentation, with the approval of the Contracting Officer and the execution of any contract determined by the Contracting Officer to be necessary, consistent with the following provisions:

(1) The Contractor may introduce non-Project water into Project facilities and deliver said water to lands within the Contractor's Service Area, including Ineligible Lands, subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an appropriate rate as determined by the CVP Ratesetting Policy and the RRA, each as amended, modified or superceded from time to time. In addition, if electrical power is required to pump non-Project water through the facilities, the Contractor shall be responsible for obtaining the necessary

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power and paying the necessary charges therefore.

(2) Delivery of such non-Project water in and through Project facilities shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to other Project water service contractors; (iii) interfere with the delivery of contractual water entitlements to any other Project water service contractors; or (iv) interfere with the physical maintenance of the Project facilities.

(3) Neither the United States nor the Operating Non-Federal Entity shall be responsible for control, care or distribution of the non-Project water before it is introduced into or after it is delivered from the Project facilities. The Contractor hereby releases and agrees to defend and indemnify the United States and the Operating Non-Federal Entity, and their respective officers, agents, and employees, from any claim for damage to persons or property, direct or indirect, ~~arising out of or relating to~~ resulting from the Contractor's or its officers', employees', agents' or assigns', act of (i) extracting or diverting non-Project water from any source, or (ii) diverting such non-Project water into Project facilities.

(4) Diversion of such non-Project water into Project facilities shall be consistent with all applicable laws, and if involving groundwater, consistent with any applicable groundwater management plan for the area from which it was extracted.

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(5) After Project purposes are met, as determined by the Contracting Officer, the United States and the Contractor shall share priority to utilize the remaining capacity of the facilities declared to be available by the Contracting Officer for conveyance and transportation of non-Project water prior to any such remaining capacity being made available to non-Project contractors.

OPINIONS AND DETERMINATIONS

18. (a) Where the terms of this Contract provide for actions to be based upon the opinion or determination of either party to this Contract, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. Both parties, notwithstanding any other provisions of this Contract, expressly reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each opinion or determination by either party shall be provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is intended to or shall affect or alter the standard of judicial review applicable under Federal law to any opinion or determination implementing a specific provision of Federal law embodied in statute or regulation.

(b) The Contracting Officer shall have the right to make determinations necessary to administer this Contract that are consistent with the ~~{expressed and implied}~~ provisions of this Contract, the laws of the United States and of the State of California, and the rules and regulations

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promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the Contractor to the extent reasonably practicable.

COORDINATION AND COOPERATION

19. (a) In order to further their mutual goals and objectives, the Contracting Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and with other affected Project Contractors, in order to improve the operation and management of the Project. The communication, coordination, and cooperation regarding operations and management shall include, but not be limited to, any action which will or may materially affect the quantity or quality of Project Water supply, the allocation of Project Water supply, and Project financial matters including, but not limited to, budget issues. The communication, coordination, and cooperation provided for hereunder shall extend to all provisions of this Contract. Each party shall retain exclusive decision making authority for all actions, opinions, and determinations to be made by the respective party.

(b) Within 120 days following the effective date of this Contract, the Contractor, other affected Project Contractors, and the Contracting Officer shall arrange to meet with interested Project Contractors to develop a mutually agreeable, written Project-wide process, which may be amended as necessary separate and apart from this Contract. The goal of this process shall be to provide, to the extent practicable, the means of mutual communication and interaction regarding significant decisions concerning Project operation and management on a real-time basis.

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(c) In light of the factors referred to in subdivision (b) of Article 3 of this Contract, it is the intent of the Secretary to improve water supply reliability. To carry out this intent:

(1) The Contracting Officer will, at the request of the Contractor, assist in the development of integrated resource management plans for the Contractor. Further, the Contracting Officer will, as appropriate, seek authorizations for implementation of partnerships to improve water supply, water quality, and reliability.

(2) The Secretary will, as appropriate, pursue program and project implementation and authorization in coordination with Project Contractors to improve the water supply, water quality, and reliability of the Project for all Project purposes.

(3) The Secretary will coordinate with Project Contractors and the State of California to seek improved water resource management.

(4) The Secretary will coordinate actions of agencies within the Department of the Interior that may impact the availability of water for Project purposes.

(5) The Contracting Officer shall periodically, but not less than annually, hold division level meetings to discuss Project operations, division level water management activities, and other issues as appropriate.

(d) Without limiting the contractual obligations of the Contracting Officer under the other Articles of this Contract, nothing in this Article shall be construed to limit or constrain the

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Contracting Officer's ability to communicate, coordinate, and cooperate with the Contractor or other interested stakeholders or to make decisions in a timely fashion as needed to protect health, safety, or the physical integrity of structures or facilities.

CHARGES FOR DELINQUENT PAYMENTS

20. (a) The Contractor shall be subject to interest, administrative and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes 60 days delinquent, the Contractor shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent 90 days or more, the Contractor shall pay an additional penalty charge of six percent per year for each day the payment is delinquent beyond the due date. Further, the Contractor shall pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of one-half of one percent per month prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

EQUAL OPPORTUNITY

21. During the performance of this Contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall

include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

22. (a) The obligation of the Contractor to pay the United States as provided in this Contract is a general obligation of the Contractor notwithstanding the manner in which the obligation may be distributed among the Contractor's water users and notwithstanding the default of individual water users in their obligations to the Contractor.

(b) The payment of charges becoming due hereunder is a condition precedent to receiving benefits under this Contract. The United States shall not make water available to the Contractor through Project facilities during any period in which the Contractor may be in arrears in the advance payment of water rates due the United States. The Contractor shall not furnish water made available pursuant to this Contract for lands or parties which are in arrears in the advance payment of water rates levied or established by the Contractor.

(c) With respect to subdivision (b) of this Article, the Contractor shall have no obligation to require advance payment for water rates which it levies.

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

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(b) These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

(c) The Contractor makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Contractor recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this Article, and that the United States reserves the right to seek judicial enforcement thereof.

PRIVACY ACT COMPLIANCE

24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in maintaining Landholder acreage certification and reporting records, required to be submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

(b) With respect to the application and administration of the criminal penalty provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible for maintaining the certification and reporting records referenced in (a) above are considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

(c) The Contracting Officer or a designated representative shall provide the Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior, Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information contained in the Landholder's certification and reporting records.

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(d) The Contracting Officer shall designate a full-time employee of the Bureau of Reclamation to be the System Manager who shall be responsible for making decisions on denials pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is authorized to grant requests by individuals for access to their own records.

(e) The Contractor shall forward promptly to the System Manager each proposed denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System Manager with information and records necessary to prepare an appropriate response to the requester. These requirements do not apply to individuals seeking access to their own certification and reporting forms filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy Act as a basis for the request.

CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

25. In addition to all other payments to be made by the Contractor pursuant to this Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and detailed statement submitted by the Contracting Officer to the Contractor for such specific items of direct cost incurred by the United States for work requested by the Contractor associated with this Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in writing in advance by the Contractor. This Article shall not apply to costs for routine contract administration.

WATER CONSERVATION

26. (a) Prior to the delivery of water provided from or conveyed through Federally

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constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be implementing an effective water conservation and efficiency program based on the Contractor's water conservation plan that has been determined by the Contracting Officer to meet the conservation and efficiency criteria for evaluating water conservation plans established under Federal law. The water conservation and efficiency program shall contain definite water conservation objectives, appropriate economically feasible water conservation measures, and time schedules for meeting those objectives. Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's continued implementation of such water conservation program. In the event the Contractor's water conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such criteria, due to circumstances which the Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently works with the Contracting Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor immediately begins implementing its water conservation and efficiency program in accordance with the time schedules therein.

(b) Should the amount of M&I Water delivered pursuant to subdivision (a) of Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement the Best Management Practices identified by the time frames issued by the California Urban Water

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Conservation Council for such M&I Water unless any such practice is determined by the Contracting Officer to be inappropriate for the Contractor.

(c) The Contractor shall submit to the Contracting Officer a report on the status of its implementation of the water conservation plan on the reporting dates specified in the then existing conservation and efficiency criteria established under Federal law.

(d) At five year intervals, the Contractor shall revise its water conservation plan to reflect the then current conservation and efficiency criteria for evaluating water conservation plans established under Federal law and submit such revised water management plan to the Contracting Officer for review and evaluation. The Contracting Officer will then determine if the water conservation plan meets Reclamation's then current conservation and efficiency criteria for evaluating water conservation plans established under Federal law.

(e) If the Contractor is engaged in direct groundwater recharge, such activity shall be described in the Contractor's water conservation plan.

EXISTING OR ACQUIRED WATER OR WATER RIGHTS

27. Except as specifically provided in Article 17 of this Contract, the provisions of this Contract shall not be applicable to or affect non-Project water or water rights now owned or hereafter acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such water shall not be considered Project Water under this Contract. In addition, this Contract shall not

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be construed as limiting or curtailing any rights which the Contractor or any water user within the Contractor's Service Area acquires or has available under any other contract pursuant to Federal Reclamation law.

OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

28. (a) The O&M of a portion of the Project facilities which serve the Contractor, and responsibility for funding a portion of the costs of such O&M, have been transferred to the Operating Non-Federal Entity by separate agreement between the United States and the Operating Non-Federal Entity. That separate agreement shall not interfere with or affect the rights or obligations of the Contractor or the United States hereunder.

(b) The Contracting Officer has previously notified the Contractor in writing that the O&M of a portion of the Project facilities which serve the Contractor has been transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer under the terms and conditions of the separate agreement between the United States and the Operating Non-Federal Entity described in subdivision (a) of this Article, all rates, charges, or assessments of any kind, including any assessment for reserve funds, which the Operating Non-Federal Entity or such successor determines, sets, or establishes for the O&M of the portion of the Project facilities operated and maintained by the Operating Non-Federal Entity or such successor. Such direct payments to the

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Operating Non-Federal Entity or such successor shall not relieve the Contractor of its obligation to pay directly to the United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing Components except to the extent the Operating Non-Federal Entity collects payments on behalf of the United States in accordance with the separate agreement identified in subdivision (a) of this Article.

(c) For so long as the O&M of any portion of the Project facilities serving the Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the Contracting Officer shall adjust those components of the Rates for Water Delivered under this Contract representing the cost associated with the activity being performed by the Operating Non-Federal Entity or its successor.

(d) In the event the O&M of the Project facilities operated and maintained by the Operating Non-Federal Entity is re-assumed by the United States during the term of this Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the Contractor a revised Exhibit [B] which shall include the portion of the Rates to be paid by the Contractor for Project Water under this Contract representing the O&M costs of the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component(s) specified in the revised Exhibit [B] directly to the United States in compliance with Article 7 of this

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1115 **OPERATION AND MAINTENANCE BY DEPARTMENT OF WATER RESOURCES**

1116
1117 **28.1 The United States has transferred responsibility for the O&M of certain Project**
1118 **facilities to the State of California, Department of Water Resources (hereinafter referred to as**
1119 **“DWR”) by separate agreement, or separate agreements between the United States and the**
1120 **DWR. Such separate agreement or agreements shall not interfere with or affect the rights or**
1121 **obligations of the Contractor or the United States hereunder, except that the DWR shall be an**
1122 **Other Operating Entity for purposes of Article 5 of this Agreement. Costs payable by the**
1123 **Contractor for O&M services rendered by DWR are payable to the Operating Non-Federal**
1124 **Entity under subsection (b) of Article 28 of this Agreement. The Contracting Officer shall**
1125 **provide the Contractor with at least 90 days’ notice in the event such facilities are transferred**
1126 **to a different entity or in the event such payments shall be made to an entity other than the**
1127 **Operating Non-Federal Entity.**

1128
1129 **PUMPING PLANTS, POWER FOR PUMPING PLANTS, AND TRANSFER**
1130 **OF O&M TO CONTRACTOR**

1131
1132 **28.2**

1133
1134 **(a) Without payment or cost to the Contractor, other than appropriate rates as**
1135 **provided in Articles 7, the United States shall furnish power necessary to deliver Project water**

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from the San Luis Canal at heads and elevations sufficient to irrigate gravity the areas located below the 700-foot elevation within the San Luis Unit service area from the points of delivery identified pursuant to Subdivision (a) of Article 5 hereof.

(b) The Contractor at its own expense may install temporary pump installations and shall furnish, install, and maintain metering and other electrical facilities, all satisfactory to the Contracting Officer, for use temporarily in lieu of pumping plants to be furnished pursuant to subdivision (a) hereof. Subject to the concurrence of the Pacific Gas and Electric Company, or its successor in interest, in the conveyance of Project power and subject to the Contractor bearing the costs associated with power facilities as may be assessed by the Pacific Gas and Electric Company, or its successor in interest,, the United States shall furnish power without additional charge to the Contractor for said temporary pumping installations.

(c) The furnishing of power by the United States shall be in conformance with operating criteria, rules, and regulations established by the Contracting Officer. Such operating criteria, rules, and regulations shall be developed in cooperation with the Contractor and shall be based on acceptable irrigation management practices and the power generation capacity available to the United States for the furnishing of water to the Contractor.

(d) The United States transferred to the Contractor all or part of the pumping plants referred to this Article 28.2, said plants to be operated and maintained by the

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Contractor, and real and personal property used or useful in the operation and maintenance of the pumping plants, all in accordance with subdivision (e) of this Article 28.2.

(e) As of the effective date of the transfer of the pumping plants provided pursuant to Article 28.2(d), the Contractor accepted and at the Contractor's expense shall continue to operate and maintain said pumping plants in full compliance with Federal reclamation laws and the terms of this Contract in such manner that said pumping plants will remain in good and efficient condition.

(f) The United States shall bear the cost of major replacements required as determined by the Contracting Officer as a result of disaster or obsolescence. The Contractor at its own cost and expense shall furnish and install in said pumping plants such replacement parts as are required for proper maintenance.

(g) The Contracting Officer or his representative shall at all times have access to and may inspect and investigate the pumping plants for the purpose of ascertaining if they are being kept in safe and proper operating condition.

(h) No change in any of the pumping plants, which in the opinion of the Contracting Officer is substantial, shall be made by the Contractor without first obtaining the written consent of the Contracting Officer. The Contractor promptly shall make any and all repairs and replacements to the pumping plants which in the opinion of the Contracting Officer

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are necessary. In the event the Contractor neglects or fails to make such repairs and replacements or in the event of Government operation of the pumping plants pursuant to subdivision (i) of this Article, the United States may cause the repairs and replacements to be made and the cost thereof, as determined by the Contracting Officer, shall be paid by the Contractor to the United States upon notice of the payment due but not later than April 1 of the year following that during which such work was completed.

(i) In the event the Contracting Officer determines that the Contractor has not properly cared for, operated, and maintained said pumping plants or has failed to comply with any of the provisions of this Article, then at the election of the Contracting Officer the United States may take over from the Contractor the care, operation, and maintenance of the pumping plants by giving written notice to the Contractor of such election and the effective date thereof. Thereafter during the period of Government operation the Contractor shall pay to the United States in advance of the use of such pumping plants the Contractor's share of the cost of operation and maintenance thereof and replacements therefor, as fixed in notices from the Contracting Officer. In the event such advances are inadequate to properly care for, operate, and maintain the pumping plants to the end of any year, the Contracting Officer may give written notice of a supplemental operation and maintenance charge and the Contractor shall pay such amount on or before the date specified in said notice. Any amount of such advances

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remaining unexpended or unobligated, at the option of the Contractor, either shall be refunded or credited upon amounts to become due to the United States from the Contractor under the provisions of this contract in subsequent years. The pumping plants so taken back by the United States may be returned to the Contractor upon the furnishing to the Contractor of a written 90-day notice of intention to retransfer.

(j) The Contractor shall hold the United States harmless from, and no liability shall accrue against the United States and its officers and employees because of, any damage or injury caused by the operation of said pumping plants by the Contractor, except for any damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its officers, employees, agents, or assigns, including any responsible Operating Non-Federal Entity or Other Operating Entity, with the intent of creating the situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents, or assigns, including any responsible Operating Non-Federal Entity or Other Operating Entity; (iii) negligence of the Contracting Officer or any of its officers, employees, agents, or assigns including any responsible Operating Non-Federal Entity or Other Operating Entity; or (iv) damage or claims resulting from a malfunction of facilities owned and/or operated by the United States or responsible Operating Non-Federal Entity or Other Operating Entity.

 (k) During the time the pumping plants are operated and maintained by the

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Contractor, in addition to all other payments to be made by the Contractor under this Contract, the Contractor shall pay to the United States pursuant to Article 25 hereof costs incurred by the United States for work associated with the pumping plants under this contract normally charged by the United States to water users and properly and equitably chargeable to the Contractor.

_____ (l) The Contracting Officer may review the pumping plants constructed and being operated by the Contractor pursuant to this Article 28.2 to assist the Contractor in assessing the condition of facilities and the adequacy of the maintenance program(s).. This review may include any part or all of the pumping plants constructed pursuant to this contract.

A report of the review, including recommendations, if any, will be prepared and copies will be furnished to the Contractor. Except for such participation by the Contractor as it may desire, the review will be without cost to the Contractor.

(m) If deemed necessary by the Contracting Officer or requested by the Contractor, special inspections of the pumping plants constructed hereunder and being operated by the Contractor and of the Contractor's books and records may be made to ascertain the extent of any O&M, to determine the remedial measures required for their correction, and to assist the Contractor in solving specific problems. Any special inspection or audit shall, except in a case of emergency, be made after written notice to the Contractor and

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the actual cost thereof shall be paid by the Contractor to the United States.]

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

29. The expenditure or advance of any money or the performance of any obligation of the United States under this Contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this Contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

BOOKS, RECORDS, AND REPORTS

30. (a) The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract, including: the Contractor's financial transactions, water supply data, and Project land and right-of-way agreements; the water users' land-use (crop census), land ownership, land-leasing and water use data; and other matters that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this Contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this Contract.

(b) Notwithstanding the provisions of subdivision (a) of this Article, no books, records, or other information shall be requested from the Contractor by the Contracting Officer unless such books, records, or information are reasonably related to the administration or performance of this Contract. Any such request shall allow the Contractor a reasonable period of time within which to provide the requested books, records, or information.

(c) At such time as the Contractor provides information to the Contracting Officer

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1251 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1252 Operating Non-Federal Entity.

1253 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1254 31. (a) The provisions of this Contract shall apply to and bind the successors and
1255 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1256 therein shall be valid until approved in writing by the Contracting Officer.

1257 (b) The assignment of any right or interest in this Contract by either party shall not
1258 interfere with the rights or obligations of the other party to this Contract absent the written
1259 concurrence of said other party.

1260 (c) The Contracting Officer shall not unreasonably condition or withhold approval
1261 of any proposed assignment.

1262 SEVERABILITY

1263 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1264 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1265 association or other form of organization whose primary function is to represent parties to Project
1266 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1267 enforceability of a provision included in this Contract and said person, entity, association, or
1268 organization obtains a final court decision holding that such provision is legally invalid or
1269 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the

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parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court decision identify by mutual agreement the provisions in this Contract which must be revised and (ii) within three months thereafter promptly agree on the appropriate revision(s). The time periods specified above may be extended by mutual agreement of the parties. Pending the completion of the actions designated above, to the extent it can do so without violating any applicable provisions of law, the United States shall continue to make the quantities of Project Water specified in this Contract available to the Contractor pursuant to the provisions of this Contract which were not found to be legally invalid or unenforceable in the final court decision.

RESOLUTION OF DISPUTES

33. Should any dispute arise concerning any provisions of this Contract, or the parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring any matter to the Department of Justice, the party shall provide to the other party 30 days' written notice of the intent to take such action; Provided, That such notice shall not be required where a delay in commencing an action would prejudice the interests of the party that intends to file suit. During the 30 day notice period, the Contractor and the Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to waive or abridge any right or remedy that the Contractor or the United States may have.

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OFFICIALS NOT TO BENEFIT

34. No Member of or Delegate to Congress, Resident Commissioner, or official of the Contractor shall benefit from this Contract other than as a water user or landowner in the same manner as other water users or landowners.

CHANGES IN CONTRACTOR'S SERVICE AREA

35. (a) While this Contract is in effect, no change may be made in the Contractor's Service Area or boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise, except upon the Contracting Officer's written consent.

(b) Within 30 days of receipt of a request for such a change, the Contracting Officer will notify the Contractor of any additional information required by the Contracting Officer for processing said request, and both parties will meet to establish a mutually agreeable schedule for timely completion of the process. Such process will analyze whether the proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the Contracting Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

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FEDERAL LAWS

36. By entering into this Contract, the Contractor does not waive its rights to contest the validity or application in connection with the performance of the terms and conditions of this Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the terms and conditions of this Contract unless and until relief from application of such Federal law or regulation to the implementing provision of the Contract is granted by a court of competent jurisdiction. SINGLE SPACED

NOTICES

37. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, CA 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors of the _____ The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

CONFIRMATION OF CONTRACT

38. The Contractor, after the execution of this Contract, shall promptly seek to secure a decree of a court of competent jurisdiction of the State of California, confirming the execution of this Contract. The Contractor shall furnish the United States a certified copy of the final decree, the validation proceedings, and all pertinent supporting records of the court approving and confirming this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor. SINGLE SPACED

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1327 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and year first
1328 above written.

1329 THE UNITED STATES OF AMERICA
1330 By: _____
1331 Regional Director, Mid-Pacific Region
1332 Bureau of Reclamation

1333 _____ **WATER DISTRICT**

1334 By: _____
1335 President of the Board of Directors

1336 Attest:

1337 By: _____
1338 Secretary of the Board of Directors

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EXHIBIT A

[Map or Description of Service Area]

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EXHIBIT B

[Initial Rates and Charges]